

111TH CONGRESS
1ST SESSION

H. RES. 72

Expressing the sense of the House of Representatives that absent congressional approval the Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities During Their Temporary Presence in Iraq is merely advisory and not legally binding on the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 2009

Ms. LEE of California (for herself, Mr. LEWIS of Georgia, Mr. FILNER, Mr. GRIJALVA, Ms. WOOLSEY, Ms. JACKSON-LEE of Texas, and Mr. STARK) submitted the following resolution; which was referred to the Committee on Foreign Affairs

RESOLUTION

Expressing the sense of the House of Representatives that absent congressional approval the Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities During Their Temporary Presence in Iraq is merely advisory and not legally binding on the United States, and for other purposes.

Whereas the Framers of the Constitution of the United States intended that all significant foreign commitments

by the United States Government be made by treaty or statute;

Whereas the Constitution of the United States gives Congress the power to declare war, to raise and support armies, to provide and maintain a navy, to make rules governing such forces, to provide for organizing and calling forth the militia, to make rules concerning captures on land and water, and to regulate commerce with foreign nations;

Whereas the Constitution of the United States also gives Congress the power to make all laws necessary for carrying out the powers vested in the Government, and the power to raise and spend money;

Whereas in addition, the Senate has the responsibility of confirming appointments to diplomatic posts and by two-thirds vote must give its advice and consent to treaties before such treaties become effective;

Whereas Congress, established in Article I of the Constitution of the United States, is a co-equal branch of the Government, and each Member of Congress, regardless of political party, must resist encroachment by the executive branch on the constitutional prerogatives of Congress;

Whereas on November 26, 2007, and without congressional consultation or input, United States President George W. Bush and Iraqi Prime Minister Nouri al-Maliki signed the United States-Iraq Declaration of Principles for Friendship and Cooperation, a shared statement of intent that established common principles to frame the future relationship between the United States and Iraq;

Whereas President Bush publicly stated that the relationship envisioned in the United States-Iraq Declaration of Prin-

ciples for Friendship and Cooperation includes cooperation between the United States and Iraq in the political, diplomatic, economic, and security arenas;

Whereas President Bush declared his intent, during 2008, to negotiate and conclude before he leaves office detailed arrangements that will codify the bilateral relationship between the United States and Iraq following the expiration of the mandate of the Multi-National Force—Iraq under chapter VII of the United Nations Charter and the concomitant resumption of Iraq’s normal status as a state with full legal and functional sovereignty and authorities and the restoration of Iraq’s legal international status;

Whereas on November 17, 2008, Iraqi Foreign Minister Hoshiyar Zebari and United States Ambassador to Iraq Ryan Crocker signed the Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities During Their Temporary Presence in Iraq (hereinafter referred to as the “Agreement”);

Whereas the procedure followed by the Government of Iraq required the Agreement to be submitted to and approved by Parliament, the national legislature of the Republic of Iraq, which approved the Agreement in December 2008; in contrast the Agreement has not been submitted by the President to the United States Congress for approval as contemplated by the Constitution;

Whereas the Agreement contemplates a timetable that could leave United States troops in Iraq until December 31, 2011, which would cost American taxpayers more than \$360 billion based on current spending levels, money that

can be drawn from the United States Treasury only by a congressionally authorized appropriation of funds;

Whereas the Agreement undermines the constitutional powers of the next president by subjecting United States military operations to the approval of the Iraqi Government, notwithstanding that throughout history, United States troops have been subjected to foreign control in peacekeeping operations only where authorized under treaties ratified by the Senate;

Whereas the Agreement subjects thousands of private military contractors to Iraqi courts in the event that they are charged with crimes but does not specify the law to be applied or the procedural safeguards that must be observed by Iraqi courts to ensure due process and equal justice; and

Whereas President Bush's claim that he alone is empowered by the Constitution to negotiate and conclude detailed arrangements that will institutionalize the bilateral relationship between the United States and Iraq without any involvement of the Congress reflects a profound misreading of the Constitution: Now, therefore, be it

1 *Resolved*, That it is the sense of the House of Rep-
2 resentatives that—

3 (1) the Agreement Between the United States
4 of America and the Republic of Iraq on the With-
5 drawal of United States Forces from Iraq and the
6 Organization of Their Activities During Their Tem-
7 porary Presence in Iraq (hereinafter referred to as
8 the “Agreement”) is not a genuine Status of Forces

1 Agreement and lacks the force of law because it was
2 formalized in a manner inconsistent with the re-
3 quirements of the United States Constitution;

4 (2) Congress should consider the Agreement to
5 be advisory in nature and should not be legally
6 bound nor obligated to appropriate any of the funds
7 necessary to carry out the terms of the Agreement;

8 (3) the House of Representatives should con-
9 duct hearings during the 111th Congress to deter-
10 mine, inter alia, whether to authorize and fund the
11 Agreement or to reject the Agreement to the extent
12 that it—

13 (A) contemplates the United States main-
14 taining United States troops in Iraq until De-
15 cember 31, 2011, at a cost of hundreds of bil-
16 lions of dollars to the United States Treasury;

17 (B) subjects United States military oper-
18 ations to “the approval of the Iraqi govern-
19 ment”, by giving operational control to “joint
20 mobile operations command centers” controlled
21 by a joint American-Iraqi committee; and

22 (C) subjects thousands of private military
23 contractors to Iraqi courts in the event that
24 they are charged with serious crimes but does
25 not specify what crimes are to be deemed “seri-

1 ous” and does not address the law to be applied
2 or the procedural safeguards that must be ob-
3 served by Iraqi courts to ensure due process
4 and equal justice; and

5 (4) the House of Representatives should con-
6 duct hearings during the 111th Congress to deter-
7 mine the impact, if any, of the Agreement on the
8 status of the nearly 50,000 Iraqi nationals held in
9 preventive detention by the Iraqi Government and
10 United States forces as well as any such foreign na-
11 tionals in Iraq who have been designated as “pro-
12 tected persons” under the Fourth Geneva Conven-
13 tion.

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